

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Marvin Bowens Green, #346650, *aka*  
*Marvin Bowens-Green, #346650,*

PETITIONER

v.

Tanya James,

RESPONDENT

Case No. 4:22-cv-04291-TLW

**ORDER**

On November 29, 2022, Petitioner Marvin Bowens Greens, a state inmate proceeding *pro se*, filed this action seeking habeas corpus relief under 28 U.S.C. § 2254. ECF No. 1. The petition was referred to the Honorable Thomas E. Rogers, III, United States Magistrate Judge, for review pursuant to 28 U.S.C. § 36b(b)(1)(B). Thereafter, on December 7, 2022, the magistrate judge issued a proper form order, ECF No. 5, directing Petitioner to either pay the \$5.00 habeas corpus filing fee or complete Form AO24, which is an application for *in forma pauperis* status. Petitioner was given 21 days from the date of this order, *i.e.*, until December 28, 2022, to either pay the fee or submit his application.

After this deadline had run, the magistrate judge filed a Report and Recommendation (“Report”) on January 19, 2023. ECF No. 9. In the Report, he recommends that this Court dismiss the petition without prejudice pursuant to Federal Rule of Civil Procedure 41(b) because of Petitioner’s failure to comply with the proper form order. Petitioner was given until February 2, 2023, to file any objections to the Report.

Petitioner timely filed objections to the Report on February 1, 2023.<sup>1</sup> ECF No. 12. He notes in his objections that “he did his due diligence regarding complying with the filing deadline and paid the five dollars to file his habeas corpus application.” ECF No. 12 at 1. Attached to his objections is a copy of the check used to pay the filing fee, which is dated December 19, 2022. ECF No. 12–1. Petitioner asserts that he “followed the normal procedures for writing a check and should not be penalized for any problem caused by prison officials.” ECF No. 12 at 1.

The Court has reviewed the Report and Petitioner’s objections and finds that the \$5.00 filing fee has now been paid and was received on January 20, 2023. *See* ECF No. 11. Accordingly, because the filing fee has now been paid, this matter is recommitted to the magistrate judge for further proceedings.

**IT IS SO ORDERED.**

*s/ Terry L. Wooten*  
Terry L. Wooten  
Senior United States District Judge

March 13, 2023  
Columbia, South Carolina

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<sup>1</sup> This is the date his objections were delivered to his facility’s mail room and thus the date of filing. *See Houston v. Lack*, 487 U.S. 266 (1988) (holding that a prisoner’s pleading was filed at the moment of delivery to prison authorities for forwarding to District Court).